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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,552	12/05/2003	Mark E. Deem	514362000204	4326

7590 03/07/2007
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EXAMINER

ANDERSEN, MICHAEL T

ART UNIT	PAPER NUMBER
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3734

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/07/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/729,552	Applicant(s) DEEM ET AL.	
	Examiner M. Thomas Andersen	Art Unit 3734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10/26/2006, 10/02/2006</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgement is made of the response filed 12/18/2006, to the non-final Office action dated 9/14/2006.

Response to Arguments

Applicant's arguments filed 12/18/2006 have been fully considered but they are not persuasive. Applicant has argued 1) McAlister does not disclose that the stapling device 50 is removable; and 2) the stapling device 50 is not "positionable between" the firing edge 54 of stapling device 50 and the anvil 12 as recited in claim 1.

As to (1) and (2) above, a septum is defined as "a dividing wall, membrane, or the like" septum. Dictionary.com. *Dictionary.com Unabridged (v 1.1)*. Random House, Inc. <http://dictionary.reference.com/browse/septum> (accessed: February 21, 2007).

All that is required in claim 1 is that the septum be removably positionable between a first region (for releasably adhering a first area of tissue) and a second region (for releasably adhering a second area of tissue). The Examiner has defined numeral 50"" (figure 5B) as the septum, as it is removably positionable between a first region 26"" and a second region (opposite 26""). The "septum" moves from the first region to the second region in operation. Thus, it is both "removable" and "positionable" between the first and second regions.

The previous rejection follows:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 3734

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims **1-12** are rejected under 35 U.S.C. 102(e) as being anticipated by McAlister et al., U.S. Patent No. **6,398,795** (hereinafter "**McAlister**").

McAlister discloses a stapling and cutting resection device. Figure 5A shows a tissue positioning device defining a first region 26''' for releasably adhering a first area of tissue; a second region (near 54''') for releasably adhering a second area of tissue; a fastener housed within the device and adapted to be deployed such that the first area of tissue is secured to the second area of tissue via the fastener; and a septum 50''' removably positionable between the first region and the second region.

The tissue positioning device defines a slot 20'''.

The tissue positioning device defines a plurality of additional regions for adhering additional tissue thereto (the distal and proximal portions of the slot).

The first region and second region are adjacently located.

The first area of tissue and the second area of tissue are adhered to the tissue positioning device via a vacuum (see col. 5, line 55).

The first and second regions are in fluid communication with a common channel (lumen of 1''') defined within the tissue positioning device.

The common channel can be said to be separated via the septum 50'''.

There are a plurality of additional fasteners housed within the device (see col. 5A).

The fastener comprises a staple (see Title).

The septum is longitudinally positioned in the tissue positioning device.

Collectively calling the blade 90 and the stapling device the septum, it defines at least one surface adapted to abrade adjacent tissue. Abrading consists of cutting (see figure 5A).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Thomas Andersen whose telephone number is (571) 272-8024. The examiner can normally be reached on M-F 8AM-4:30PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571) 272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3734

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Thomas Andersen

February 21, 2007

A handwritten signature in black ink, appearing to read "M J Hayes", with a long horizontal flourish extending to the right.

MICHAEL J. HAYES
SUPERVISORY PATENT EXAMINER